

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

OMAR GRAYSON,

Plaintiff,

v.

HAROLD SCHULER,

Defendant.

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Case No. 3:09-cv-335-MJR-DGW

ORDER

WILKERSON, Magistrate Judge:

This matter is before the Court on the Motion to Vacate Portion of Order Setting *Pavey* Hearing filed by Defendant, Harold Schuler, on February 15, 2013 (Doc. 95). The Motion is **GRANTED**.

The Complaint in this matter was filed on May 4, 2009 (Doc. 1). Defendant moved to dismiss on the grounds of qualified immunity and exhaustion (Dc. 14). In light of these claims, the Court set a *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008), hearing which was held on July 19, 2010. Pursuant to that hearing, United States Magistrate Judge Clifford J. Proud issued a Report and Recommendation (Doc. 32) that was adopted by United States District Judge Michael J. Reagan (Doc. 44). Judge Reagan found that Defendant was not entitled to summary judgment on exhaustion grounds but that he was entitled to qualified immunity. The matter was subsequently closed. Plaintiff appealed that decision and the Seventh Circuit Court of Appeals reversed and remanded this matter for further proceedings on January 13, 2012 (Doc. 66). After counsel was appointed for Plaintiff, a scheduling order was entered on November 27, 2012 (Do. 89). Thereafter, on December 19, 2012, Defendant filed an Answer (Doc. 92). In that Answer, Defendant raised the affirmative defenses of qualified immunity and exhaustion. An Amended

Scheduling Order was thereafter entered setting this matter for another *Pavey* hearing.

As noted in the Motion, the exhaustion and qualified immunity issues have already been decided by the Court. Defendant included these affirmative defenses to preserve them for appeal. Therefore, another *Pavey* hearing is unnecessary, the issue already having been decided. The hearing set for **March 29, 2013** is hereby **CANCELLED**. The parties may commence with discovery related to the merits of Plaintiff's claim.

DATED: February 22, 2013

DONALD G. WILKERSON
United States Magistrate Judge